LADY CHIEF JUSTICE OF NORTHERN IRELAND

FACULTY OF FORENSIC PSYCHIATRY ANNUAL CONFERENCE

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KEYNOTE ADDRESS

Good morning. It is a privilege to join you today at the Faculty of Forensic Psychiatry Annual Conference here in Belfast. I am grateful to Dr Davoren and the organising committee for the kind invitation to speak and for the warm welcome extended to me upon my arrival.

This gathering brings together professionals from across the United Kingdom, from Ireland, and from further afield. The breadth of your expertise reflects the global relevance of the issues we will discuss. The conference programme demonstrates the depth of your engagement with the most challenging intersections of medicine, mental health, risk management and the criminal law.

As Lady Chief Justice of Northern Ireland, I welcome the opportunity to speak with those whose work is essential to the administration of justice. You are clinicians who care for individuals at moments of profound vulnerability. You are researchers who deepen our collective understanding of the human mind. You are expert witnesses whose clarity assists judges and juries in reaching sound conclusions. You are also public servants whose decisions influence the lives of individuals, families and communities. I recognise the demands of this work and the significance of your contribution to fairness and public protection.

In recent years, important questions have emerged about the relationship between international human rights obligations and the operation of our domestic criminal justice system. These developments have prompted renewed examination of how

courts assess participation, autonomy and fairness in the trial process, particularly in cases involving mental disorder or impaired decision making. Alongside these broader debates, there has also been increasing attention on the role and responsibilities of expert witnesses in criminal proceedings. Their evidence frequently informs decisions of profound significance for both defendants and the wider community. Today I want to reflect on these two connected issues. I want to consider how international rights standards influence our domestic legal framework, how the law in Northern Ireland approaches the question of whether an individual is fit to stand trial, and how the courts depend upon expert clinical evidence to ensure that criminal proceedings remain fair, rigorous and anchored in sound professional judgment.

Our legal system operates within a framework of rights that has deepened significantly over the past generation. This year marks twenty-five years since the Human Rights Act 1998 came into force. It is difficult to overstate its constitutional impact.

The Human Rights Act ensured that the guarantees of the European Convention on Human Rights became directly enforceable in our courts, transforming not only the outcomes of individual cases but also the culture of justice itself. It embedded the principle that both defendants and victims are rights-holders. It required courts to examine whether procedures are not only lawful but fair. It created a vocabulary of dignity, equality and participation that now permeates all aspects of the criminal process.

In the context of mental health and criminal responsibility, the Human Rights Act has reinforced the importance of ensuring that no person should be exposed to a trial they cannot meaningfully comprehend, nor denied the opportunity to participate

when they are capable of doing so. It is the foundation upon which modern decision making about fitness to plead rests.

Alongside this domestic framework, international thinking has increasingly been shaped by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), an instrument that has become a prominent reference point in contemporary discussions about autonomy, participation and equality. Article 12 of the Convention is particularly significant. It affirms that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and it places emphasis on access to the supports that individuals may require in exercising that capacity. Through its General Comment No. 1, the UN Committee has advanced a strongly progressive interpretation of this provision, encouraging states to move away from substituted decision-making models and toward frameworks that prioritise will, preferences and supported autonomy.

It is essential, however, to situate these developments within our own dualist constitutional structure. The UNCRPD is not incorporated into domestic law and therefore does not create directly enforceable legal rights within our courts. This point has recently been underscored in significant litigation in Northern Ireland. In *SPUC v Secretary of State for Northern Ireland*[1], the Court of Appeal considered a challenge to the recently implemented abortion regulations, which included an argument that provisions relating to severe foetal impairment were incompatible with the UNCRPD's principles of non-discrimination and respect for the dignity of persons with disabilities. While the court acknowledged the Convention's importance within global disability-rights discourse, it was clear that the UNCRPD cannot override the statutory framework enacted by Parliament, nor can it create binding obligations in the absence of incorporation. Instead, the court treated the

[1] [2023] NICA 35

Convention as an interpretive context, regarding it as informative, but not determinative.

When understood in this way, the UNCRPD remains a valuable part of the wider international landscape. Its themes of dignity, autonomy, participation, equality and supported decision-making align closely with principles already embedded in article 8 of the European Convention on Human Rights, which continues to be the primary rights-based framework applicable in this jurisdiction. Engaging with the Convention enables our courts to remain informed by evolving international standards while remaining firmly anchored in the Human Rights Act and the ECHR. This approach preserves constitutional coherence, respects legislative supremacy, and ensures that the insights of international disability-rights law enrich our understanding of autonomy and participation within the parameters of domestic law.

Any consideration of fitness to plead inevitably begins with *Pritchard*[2], the nineteenth-century decision that continues to underpin the modern test. Though the facts were unusual, the court identified the core functional abilities essential to a fair trial: understanding the charge, following the proceedings, challenging jurors and instructing counsel.

What is striking, particularly for an audience such as this, is the context in which that judgment was delivered. Trials of that era were short, procedural expectations were modest, and psychiatry as a scientific and medical discipline was still in its infancy, indeed the case pre-dated the foundation of the Royal College of Pschiatry by some five years. There was no established diagnostic framework, no structured clinical evidence and no recognised expertise to guide the court's understanding of mental

[2] [1836] 7 C. & P. 303

disorder. Yet the sitting judge Alderson B nonetheless recognised that fairness required more than the formalities of arraignment and verdict. In the absence of psychiatric testimony, he grounded his reasoning in careful, practical assessment of the accused's abilities to comprehend, to communicate and to participate. The lasting strength of *Pritchard* lies not in its archaic phrasing, but in this enduring insight, that a defendant must possess the functional capacities required for meaningful engagement with their trial.

Modern courts have had to adapt that principle to reflect contemporary trial practice and the dramatic advances in clinical understanding. A particularly stark illustration of this can be seen in the recent decision in *R v Calocane*[3]. The case arose from the deeply tragic events in Nottingham in June 2023, when a young man suffering from florid and treatment-resistant paranoid schizophrenia carried out a series of violent attacks in the early hours of the morning, killing three people and seriously injuring three others during a single psychotic episode. These appalling events required the Court of Appeal to consider how profound mental disorder bears upon culpability, participation and the appropriate legal response in a modern system. The court emphasised that cases marked by such psychiatric disturbance demand a structured, evidence-based analysis of an individual's capacity to participate and of the safeguards necessary to maintain fairness.

The judgment illustrates how contemporary practice has moved beyond the rigid common law categories of the nineteenth century and now depends upon functional, clinically informed evaluation, supported by specialist expertise.

The core inquiry therefore remains functional, contextual and rooted in modern clinical evidence. Although its origins lie in a very different era, the *Pritchard*

[3] [2024] EWCA Crim 490

principle continues to shape our understanding of what fairness requires of the criminal process.

The evolution of the law from *Pritchard* has continued within the statutory structure established by the Mental Health (Northern Ireland) Order 1986, which provides the procedural framework and evidential requirements for determining unfitness in the Crown Court.

The 1986 Order, through mechanisms such as Article 49 and Article 49A, sets out the process by which a court must consider the mental condition of an accused person and determine whether he or she lacks the capacity to stand trial. These provisions ensure that determinations are grounded not merely in judicial intuition but in structured clinical evidence from approved medical practitioners.

Questions of unfitness in this jurisdiction must still be resolved within the scaffolding of the 1986 Order, which requires medical evidence from two registered practitioners and provides for a "finding of fact" hearing to determine whether the accused "did the act or made the omission" where unfitness is established.

This statutory framework has for many years acted as the vessel into which the common law *Pritchard* criteria have been poured, ensuring that the test is applied in a manner that is clinically informed, procedurally consistent and procedurally fair. The 1986 regime ensures that expert psychiatric evidence forms the backbone of judicial decision making, something that *Pritchard* itself could never have anticipated when it emerged at a time when psychiatry was in its very infancy as a distinct discipline.

The modern landscape has subsequently been shaped by the Mental Capacity Act (Northern Ireland) 2016, a statute that, although not replacing the 1986 Order for criminal proceedings, represents a significant conceptual shift in how capacity is

understood across Northern Ireland's legal system. The 2016 Act adopts a functional, decision-specific model of capacity and embeds principles that place autonomy, decision-making ability and tailored support at the centre of legal assessment.

While the fitness to plead test in criminal proceedings remains governed by the common law as channelled through the 1986 Order, the 2016 Act provides an essential and contemporary backdrop. It has influenced clinical practice, informed the thinking of policymakers and law reform bodies, and contributed to the broader evolution of capacity jurisprudence in this jurisdiction. Its emphasis on supporting decision making wherever possible mirrors the longstanding judicial reluctance to remove a defendant from the ordinary trial process unless it is genuinely necessary.

This functional, decision-specific approach can also be seen in cases involving older adults whose cognitive impairment affects their ability to make and implement important life choices. In the *Sherrie*[4] case, the court was asked to determine whether an elderly woman with significant dementia retained the capacity to exercise a long-standing right of residence under her late husband's will.

The issues required a careful examination of her historical connection with the property, her present functional abilities, and the practical realities of her care needs. The court also had to consider the article 8 implications of her move into supervised accommodation and the proportionality of interference with her established living arrangements. The case illustrates how capacity jurisprudence in this jurisdiction balances autonomy and protection, with decisions being rooted in evidence, focused on the specific choice to be made, and grounded in an approach that seeks to maximise participation while ensuring that protective interventions remain necessary, proportionate and rights-compliant.

[4] [2017] NICA 65

Taken together, the Mental Health (Northern Ireland) Order 1986 and the Mental Capacity Act (Northern Ireland) 2016 create the statutory and conceptual environment within which the common law test now operates. They ensure that the assessment of fitness is both clinically robust and aligned with modern understandings of mental capacity, while still reflecting the protective purpose that has always underpinned the *Pritchard* inquiry.

The combined effect is a framework that both respects the historic lineage of the test and ensures its relevance and fairness in the context of twenty-first-century psychiatric and legal knowledge.

The issue of fitness to plead is something which crops up at various tiers within the justice system, but interestingly is dealt with differently depending on the level of court involved. In the absence of a statutory provision, such as under Article 49 of the Mental Health Order which relates solely to criminal matters in the Crown Court, a distinct approach has evolved within the magistrates' courts, where concerns about an accused's capacity are not channelled through a formal statutory inquiry but are instead evaluated as part of the overall evidential matrix.

District Judges at summary level consider psychiatric and psychological material holistically, assessing whether the accused's participation can be supported through courtroom adjustments, intermediary assistance or modified procedures, or whether a protective fact-finding process under Article 44(4) of the Mental Health (Northern Ireland) Order 1986 may be more appropriate.

This flexible model, shaped in part by persuasive authorities in England and Wales such as *R (P) v Barking Youth Court*[5] and *Singh v Stratford Magistrates' Court*[6], allows

[5] [2002] 2 Cr App R 19
[6] [2007] EWHC 1582 (Admin)

the judicial focus to remain squarely on the accused's functional abilities in context, rather than on the procedural threshold of a discrete fitness to plead application. It enables the magistrates' courts to adapt responsively to the clinical realities of each case and to prioritise supported participation wherever possible.

In many respects, this pragmatic, participation-centred methodology resonates with the principles of the UNCRPD, particularly Article 12's emphasis on recognising individuals as rights-holders and supporting them to exercise their legal capacity.

The summary-court approach, by integrating expert clinical evidence into the broader evidential picture and by seeking to maintain defendants within the ordinary trial process through reasonable supports, reflects a model of practice that aligns with the Convention's preference for supported decision making over substituted decision making.

It is a method that has evolved organically, through judicial craftsmanship and practical necessity, and it reinforces the broader trajectory of the law towards maximising engagement and ensuring that vulnerability does not automatically lead to procedural exclusion. At the same time, it preserves the essential safeguard that remains necessary in exceptional cases where participation cannot be facilitated, even with the fullest suite of supports, that the court must still be able to conclude that a defendant is not fit to plead, thereby upholding fairness, dignity and the integrity of the criminal process.

Over the past several decades, and particularly following the introduction of the Human Rights Act, judges, at all tiers of the criminal justice system, have been increasingly supported by advances in clinical expertise and by the wider development of special measures. Expert psychiatric and psychological evidence has

allowed courts to understand far more about communication impairments, developmental disorders, fluctuating capacity and the effects of trauma.

Judicial training has improved awareness of these issues, and judges are now better equipped than ever to interpret the *Pritchard* criteria in a way that is grounded in modern clinical reality. This has enabled the test to operate in a manner that is both consistent with its historical roots and fully responsive to contemporary understanding.

Importantly, many individuals who, under the strict nineteenth-century formulation, might have been deemed unfit to plead are now able to participate effectively because of the sophisticated supports available. Special measures, developed primarily for vulnerable witnesses, have expanded into tools that can assist defendants. Registered intermediaries, for example, play a crucial role.[7] These communication specialists act independently to support a defendant's ability to understand and express themselves in court. Although originally designed for witnesses, intermediaries are now recognised as vital in enabling an accused to engage with proceedings, and they help ensure that the trial process reflects the individual's true capacities rather than their communication barriers.

The Law Commission, as the independent statutory body tasked with reviewing areas of law that have become outdated or inconsistent, and recommending reforms to ensure that the legal system remains fair, modern and accessible, has highlighted the importance of intermediary support and recommended a statutory entitlement to such assistance to ensure fairness and consistency.

Judges and counsel also have access to resources such as The Advocate's Gateway toolkits, which provide practical guidance on questioning vulnerable individuals,

[7] Article 21BA of the Criminal Evidence (NI) Order 1999

structuring examinations, simplifying language and identifying communication needs. These tools embody the criminal justice system's commitment to maximising participation. They demonstrate that the modern approach is not to exclude defendants from trial unless absolutely necessary, but to support them to remain within the full criminal process wherever that can be achieved fairly and safely.

The Law Commission has also considered unfitness to plead. As part of its Tenth Programme of Law Reform, the Commission identified the fitness framework as an area in which nineteenth-century common law principles were increasingly ill-suited to modern clinical knowledge, advances in psychiatry and the realities of contemporary trial practice.

The Commission looked at whether the *Pritchard* test continued to identify vulnerable defendants accurately and fairly, whether the evidential requirements remained appropriate, and whether a statutory foundation might better protect both defendants and the public. Its remit therefore included reviewing the operation of the *Pritchard* criteria, examining comparative statutory models, consulting widely with clinicians, judges and practitioners, and assessing how mental disorder, cognitive impairment and communication difficulties are understood within modern medicine and psychology.

Through this comprehensive programme of work, the Commission identified some concerns about the consistency and clarity of the existing test. It concluded that the law would benefit from a statutory reformulation expressed in terms of decision-making capacity and effective participation, alongside procedural reforms to support early identification of difficulties and to expand the mechanisms available for assisting defendants. Its recommendations reflected a desire to ensure that the

legal framework keeps pace with contemporary psychiatric insight and with the broader principle of autonomy that now underpins much of mental health law.

The pace of change has been slow, however, with the Commission issuing its final report in early 2016 and the final government response, supporting the recommended changes, not being issued until 2023. Yet, this must be viewed against a backdrop of continuous and significant progress already underway in the courts where judicial practice has perhaps evolved more rapidly, taking account of emerging thinking about how fitness is determined.

I turn now to the issue of expert evidence in criminal trials. This is an area where the courts rely heavily on your independence, your clarity and your professional judgment. The importance of expert psychiatric evidence is powerfully illustrated by the recent case heard in the Northern Ireland Court of Appeal, *The King v Gallagher*[8].

The case, though recently heard, returned to the Court of Appeal nearly fifty years after a vulnerable young woman had been convicted on the basis of confessions obtained during prolonged police interviews. The court, as is its function, did not re-try the past by modern standards. Rather, it examined whether the convictions were safe in light of material that existed at the time and material that has since come to light. In doing so, we encountered a compelling example of how cognitive vulnerability, if not properly understood or deployed, can undermine the fairness of a trial.

Two expert reports were in fact available in 1977 and 1978. Mr Patten, a principal clinical psychologist, administered the Wechsler Adult Intelligence Scale and found a full scale IQ of 64, with functioning at the level of a Primary One child, profound limitations in comprehension and marked suggestibility. He warned that the

[8] [2024] NICA 63

combination of learning disability, emotional immaturity and the conditions of interrogation created a real risk that the appellant had signed statements she did not understand, especially when exposed to psychological pressure such as being shown photographs of deceased victims.

The prosecution's psychiatrist, Dr Moffatt, accepted low intellect, near illiteracy and a mental age of approximately 11 to 12 years, yet he concluded the appellant could withstand questioning. He had not conducted psychological testing and he did not have the full context of how she had been questioned.

Disclosure to the Criminal Cases Review Commission later revealed a prosecution note recording a police admission that at least one photograph of a deceased person had been shown during interview. This corroborated the appellant's account to the psychologist and sharpened the weight of the clinical evidence on suggestibility and reliability. We held that the combination of a very low IQ, illiteracy, intellectual immaturity and the use of psychologically coercive interview techniques created real concerns about the reliability of the confessions. The court also emphasised the absence of safeguards that would now be regarded as essential, namely an appropriate adult and access to legal advice.

Although the appeal was framed in terms of the safety of the conviction and the reliability of the admissions rather than a formal fitness to plead inquiry, the court's findings bring into sharp focus a question that would be unavoidable today. If the expert reports had been properly used, and if the interviewing context had been disclosed and understood, a judge would likely have had to consider whether this young woman could meaningfully participate at all.

Severe intellectual impairment, inability to comprehend even simple information, extreme suggestibility, and inability to communicate instructions reliably are the

very functional deficits that a modern court would test when deciding whether a defendant is fit to plead or whether participation can be supported only through substantial adjustments. On any modern understanding, these factors point strongly to the conclusion that she would not have been able to participate effectively in a trial process.

The case therefore stands as a clear record of the deficiencies of past practice. It shows how the absence of safeguards, limited appreciation of cognitive impairment and a failure to understand the forensic significance of expert evidence can compromise fairness in ways that may only be visible decades later. It also shows how courts now expect psychiatric and psychological material to be obtained, disclosed and applied to the real forensic questions that matter, namely comprehension, communication, decision making and suggestibility.

A parallel perspective can be seen in the recent Supreme Court decision in *Lewis-Ranwell v G4S Health Services (UK) Ltd.* The case arose from profoundly tragic events in Devon in February 2019, when a 32-year-old man with a long-standing diagnosis of schizophrenia, experiencing a florid psychotic episode, killed three elderly men whom he mistakenly believed to be paedophiles. He had been arrested twice in the days preceding the killings for suspected burglary and assault, and during both periods of detention exhibited violent, erratic behaviour and clear signs of acute mental illness.

Although the need for a Mental Health Act assessment was discussed, no assessment was arranged, and he was released on bail on the day the killings occurred. Following his arrest, he was charged with murder but was found not guilty by reason of insanity and detained under a hospital order with restrictions.

He subsequently brought civil proceedings alleging negligence on the part of healthcare providers, mental health services and the police for failing to assess and detain him, claiming that hospital admission would have prevented the killings. The question for the Supreme Court was whether the illegality defence barred his civil claim, even though he lacked criminal responsibility. The court held that the defence applied as the unlawful killings engaged a fundamental rule of public policy, and allowing recovery would undermine the integrity of the legal system.

The judgment underscores the indispensable role of expert psychiatric evidence in explaining mental state, risk and responsibility, and it reinforces the need for coherence between civil and criminal approaches to severe mental disorder. Though arising in a different context, the case reflects a consistent judicial recognition that meaningful evaluation of culpability, participation and responsibility depends upon careful, expert clinical assessment.

Set against today's standards, the lessons are direct. Expert evidence must be obtained with proper tools, interpreted with care and deployed to inform judicial decision making about participation and fairness. Safeguards such as appropriate adults, recorded interviews, intermediaries, specialist communication strategies and access to legal advice are not procedural ornaments.

These are the practical means by which the system protects dignity, supports autonomy and preserves the integrity of outcomes. *Gallagher* shows why these developments were necessary. It reminds us that expert psychiatric evidence is not peripheral. It is a safeguard that helps ensure that trials are fair, that admissions are reliable and that the law remains anchored to justice.

The interaction between expert evidence and evolving international rights standards raises further questions about the future of our criminal justice system. The Law

Commission's proposals for reform recognise the need for a capacity based test for participation and for a separate test governing the ability to enter a guilty plea. These recommendations reflect a movement towards models of supported decision making rather than substituted decision making. They also reflect a greater appreciation of the need to ensure that individuals who lack capacity are not inadvertently denied agency when they may wish to accept responsibility.

Northern Ireland is well placed to benefit from the developments in this area because our existing arrangements already reflect a commitment to enhancing participation and supporting vulnerable defendants. At Crown Court level, the statutory structure provided by the 1986 Order, offers a clear and established pathway for considering fitness, grounded in clinical evidence and informed by decades of judicial interpretation.

At magistrates' courts level, a more holistic and flexible approach has evolved through case law. This allows District Judges to consider expert psychiatric and psychological material as part of the wider evidential picture and to respond in a personalised way to the needs of each defendant. Together, these approaches demonstrate the adaptability of our system and its capacity to incorporate modern safeguards that promote understanding, engagement and fairness. As thinking in this field continues to progress, we have an opportunity to build on these strengths and to shape a framework that is practical, humane and firmly grounded in clinical expertise.

As we consider these themes collectively, a broader picture emerges. The work of this Faculty sits at the centre of our constitutional commitment to justice. The rule of law is not an abstract slogan. It is the framework within which society resolves conflict, protects rights and maintains public confidence. It is upheld not only by

courts but by all who contribute to fair and evidence based decision making. I regard forensic psychiatrists as the steady compass guiding the courts through complex terrain. That description is no mere metaphor. Your assessments illuminate the reality of an individual's mental state. They ensure that the justice system sees the person rather than the stereotype. They safeguard the balance between autonomy, protection and accountability.

As we look ahead, there is much to do. The relationship between international and domestic law will continue to evolve. The debate on fitness to plead will deepen as jurisdictions grapple with reconciling autonomy and fairness. The role of expert evidence will remain central to judicial decisions about liberty, culpability and risk. Above all, the need for collaboration between law and psychiatry will only increase. Each field brings its own discipline, its own ethical framework and its own vocabulary. Yet both are united by a commitment to truth, dignity and justice.

Before I close, it would be remiss of me not to acknowledge the growing presence of artificial intelligence (AI) in both medicine and the law. These tools are already reshaping aspects of research, administration and decision-support, and they will continue to do so. We have seen in the courts increasing numbers of self-litigants bringing cases bolstered by the assistance of AI, and I am sure you will have seen in your sphere that even Dr Google is being replaced by Dr AI.

Yet no algorithm can replicate the exercise of human judgment, the ethical sensitivity or the clinical discernment that your profession brings to our courts. The administration of justice depends on people. It depends on practitioners capable of interpreting complexity, engaging with vulnerability and understanding the lived reality behind a diagnosis. For that reason, we continue to rely heavily on expert psychiatrists to serve on our court panels and tribunals.

Through the Northern Ireland Judicial Appointments Commission, we regularly recruit clinicians to these important roles, and I would encourage those of you who feel able to contribute to consider coming forward. Your expertise remains essential to ensuring that justice in Northern Ireland is not only efficient, but humane, principled and anchored in the best that both law and medicine can offer.

I would like to conclude by expressing my gratitude once again for the vital work that each of you undertakes. Your contribution strengthens the administration of justice. It protects the vulnerable. It provides clarity where uncertainty might otherwise prevail. It ensures that our criminal justice system remains principled, compassionate and credible. Thank you for your dedication and for your continued commitment to the values that underpin a humane and effective justice system.

Thank you.